

**Resources Committee Democratic Staff Analysis
CHAIRMEN'S PROPOSED CONFERENCE REPORT (H.R. 6)
(NOVEMBER 17, 2003)**

MAJOR ISSUES

ANWR and OCS Oil and Gas Inventory - These controversial provisions are not contained in the proposed Conference Report.

Oil and Gas Subsidies - Subtitle B of Title III contains a lavish buffet of unwarranted subsidies for oil and gas companies operating on public lands and in coastal waters under the aegis of "Production Incentives." Although there is no cost estimate from CBO on the conference report, the House-passed oil and gas incentive provisions were previously estimated by CBO to reduce Federal revenues by \$383 million over ten years. The total cost is unknown as Federal revenues will be reduced for decades into the future. Among the more egregious provisions are: Section 312 (codifies "royalties in kind" authority which GAO has criticized for its potential to reduce Federal revenues); Section 314 and 315 (provide "deep well" and "deep water" royalty holidays for oil and gas operations in the Gulf of Mexico); and, Section 326 (reimburses oil and gas companies for the costs of environmental analysis for leasing activities on public lands).

On April 11th, Rep. Kind's amendment to strike the oil and gas subsidy provisions (Title II of Division C of H.R. 6) was defeated by a House vote of 171 to 251 (Democrats voted 161 to 37 in favor of the Kind amendment).

Coal Monopolies on Public Lands - Subtitle C of Title IV- Federal Coal Leases is designed to benefit coal companies operating on public lands in the West, primarily in the Powder River Basin in Wyoming. These anti-competitive and anti-consumer provisions would allow western coal companies to monopolize public lands and resources by allowing the size of coal leases to be expanded without competitive bidding and also by letting undeveloped leases to be held notwithstanding diligence requirements under current law. This subtitle also allows coal operators to default on installment bonus bid payments without penalty. On April 11th, Rep. Rahall's amendment to strike the western coal provisions (Title VII of Division C of H.R. 6) was narrowly defeated by a House vote of 208 to 212 (Democrats voted 182 to 16 in favor of the Rahall amendment).

SECTION BY SECTION SUMMARY

TITLE II – RENEWABLE ENERGY

Subtitle B – Geothermal Energy

Section 214 (Royalties) allows existing Federal lessees to pay only 50 percent of the royalties currently due under an existing Federal geothermal lease for new production, reducing Federal revenues from development on public lands. CBO estimates subsidies to geothermal (and coal) industries to cost \$41 million in the first ten years.

Section 217 (NEPA) sets new and costly precedent under the National Environmental Policy Act by providing that geothermal developers who undertake NEPA analyses will be reimbursed by the Federal government. CBO estimates that a provision similar to this in the House-passed bill, in combination with a similar reimbursement provision for oil and gas, would cost \$165 million over the next decade.

Section 220 (1872 Mining Law) allows lessees to convert geothermal leases into mining claims under the Mining Law of 1872, thus converting leases into vested property rights in public lands at no cost to the geothermal leaseholder.

Section 222 (Rental Deductions) authorizes rental payments on Federal leases to be credited toward royalties, further reducing Federal revenues.

Subtitle C – Hydroelectric

Section 231 (Hydro Licensing) creates new rights and a preferential process for industry in hydro project licensing. The hydro industry is authorized to propose conditions and fishway prescriptions as alternatives to those sought by Federal resource agencies. If not satisfied with the conditions and fishway prescriptions Federal agencies attempt to establish in the license, the hydro industry is allowed to appeal and automatically receive a trial-like hearing. These rights and preferences are not available to other stakeholders, including states and Indian tribes.

TITLE III – OIL AND GAS

Subtitle B – Production Incentives

Section 312 (Royalty-In-Kind) permanently authorizes the Department of the Interior's "royalty-in-kind" program, notwithstanding concerns from GAO and others that the pilot program favors industry, complicates Federal management, and would reduce Federal revenues if expanded.

Section 313 (Marginal Well Subsidies) permanently authorizes royalty relief to marginal oil and gas wells. A marginal well is defined as one which produces less than 15 barrels of oil per day or 90 million Btu of gas per day. As defined, approximately 80% of all wells producing on Federal lands will qualify as marginal wells. Moreover, this royalty-relief is provided in addition to the expansive tax subsidies for marginal wells, producing up to 25 barrels of oil per day, provided under the tax title of the proposed Conference Report.

Sections 314 and 315 (Gulf of Mexico Royalty Relief) provide unjustified subsidies in the form of royalty relief for the oil and gas industry for “deep wells” and “deep water” operations in the Gulf of Mexico. Federal revenues will be reduced for decades as the royalty payment waivers apply to future production from new leases. In the first ten years, CBO estimated that the cost to the Federal government of the House-passed provisions will be \$95 million.

Section 316 (Alaska Offshore Royalty Relief) provides subsidies in the form of royalty relief to promote oil and gas leasing and development offshore Alaska.

Section 317 (National Petroleum Reserve- Alaska) authorizes the waiver of royalties and rental fees which would otherwise apply to oil and gas operations within the 23 million acre National Petroleum Reserve-Alaska (NPR-A). Further, the section grants special preferences in lease administration to the Arctic Slope Regional Corporation. *This new provision was not included in either the House or Senate-passed bills.*

Section 318 (Abandoned Wells on Federal Lands) provides broad liability waiver to oil and gas operators reclaiming sites on Federal lands.

Section 321 (Energy Development And Support Facilities in the OCS) provides broad new authority for Interior to permit energy development and support facilities anywhere on the Outer Continental Shelf, including within areas currently protected by congressional oil and gas leasing and development moratoria. States are provided no direct role in the permitting process. Authorized facilities include those which support exploration, development, production, transportation or storage of oil and gas. Interior is precluded from collecting fair market value in fees or royalties.

Section 323 (Lease Acreage Limitations) lifts the 240,600-acre limitation on the amount of Federal oil and gas acreage one entity can control, encouraging further consolidation of ownership of public oil and gas resources.

Section 325 (Coastal Zone Management Act) restricts the rights of states to review and respond to Federal decisions concerning the management of coastal waters, including oil and gas leasing and development. The provision rewrites the CZMA to impose a 120-day deadline for the Commerce Secretary to rule on any appeal of a coastal state’s “consistency determination;” the deadline may not be extended for any reason and the proposed Federal

activity can proceed automatically if the deadline is missed. This provision would apply to all appeals of all consistency determinations (Corps projects, waste disposal, transportation projects, etc.), not just determinations made regarding OCS oil and gas development.

Section 326 (Reimbursement of Oil and Gas Environmental Costs) establishes new and costly precedent under the National Environmental Policy Act by authorizing the Interior Secretary to reimburse oil and gas companies through credits against royalties-owed for the costs of undertaking environmental analyses relating to oil and gas leasing. CBO estimates that this provision, in combination with a similar provision for geothermal, would cost \$165 million over the next decade.

Section 327 (Hydraulic Fracturing) prohibits oil and gas drilling fluids from being considered pollutants of drinking water under the Safe Drinking Water Act on Federal and all other lands.

Section 328 (Stormwater Exemption for Oil and Gas Operations) exempts oil and gas construction activities, including roads, drill pads, pipeline corridors, refineries, compressor stations, etc., from complying with the stormwater drainage requirements of the Clean Water Act on Federal and all other lands.

Section 329 (LNG Projects in Coastal Areas) facilitates permitting of Liquefied Natural Gas (LNG) projects and does not exclude such projects in OCS oil and gas leasing moratoria areas.

Section 330 (Offshore Pipeline Construction and Energy Development Projects) would further erode States' rights to review and comment on pipeline and other energy-related projects offshore their coastlines.. *This new provision was not included in either the House or Senate-passed bills.*

Subtitle C – Access to Federal Land

Section 343 (Priority Given to Oil and Gas and Development on Public Lands) requires that Interior give preference to oil and gas leasing programs over and above other land management responsibilities.

Section 348 (Oil and Gas Permit Approvals) requires Interior to process applications for permits to drill for oil and gas within 30 days. Allows applicants up to two years to comply with application requirements, but are requires automatic approval thereafter, regardless of environmental impacts. *This provision was not included in either the House or Senate-passed bills.*

Section 350-351 (Rights-of-Ways Across Public Lands) change existing law to allow the Federal government to establish rights-of-way across public lands administratively without

seeking or allowing for public review and comment.

Section 354 (Cleveland National Forest Transmission Line) mandates the siting of a high voltage electricity transmission line through in the Cleveland National Forest in California, overriding a decision by the State of California rejecting such siting as well as the Federal planning process.

Section 355 (Padre Island National Seashore) encourages oil and gas development under the Padre Island National Seashore as though the lands were not designated as a National Seashore.

TITLE V - INDIAN ENERGY

Title V provides a process through which Indian tribes would be authorized to enter into leases, rights-of-way agreements, and business agreements related to the development and distribution of energy resources after a general energy management plan is approved by the Secretary of Interior. The language restricts the application of certain environmental laws, including the National Environmental Policy Act (NEPA), for subsequent energy projects on Indian tribal lands. Title V has been expanded in the proposed Conference Report to encourage and facilitate construction of large oil refineries and processing facilities on Indian lands.

TITLE IX - RESEARCH AND DEVELOPMENT

Subtitle E - Fossil Energy

Part II —Ultra Deepwater and Unconventional Gas and Petroleum Resources

Section 942 (Ultra-Deepwater Offshore) provides up to \$110 million annually for a research and development program under the Department of the Interior to promote offshore oil and gas development in depths greater than 15,000 feet.

Section 943 (Unconventional Natural Gas and Other Petroleum Resources) provides up to \$90 million annually for a research and development program under the Department of the Interior to promote the use of unconventional energy resources.

Section 949 (Funding) directs that for fiscal years 2004 through 2013, \$150 million from offshore and onshore oil and gas revenues (minus prior distributions) be deposited in the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund established by this section. Additional appropriations are authorized up to \$50 million annually. *These two programs could cost up to \$2 billion over the next ten years.*

Title XII - ELECTRICITY

Section 1221 (Siting of Interstate Electric Transmission Facilities) changes existing law to allow the transfer of authority from the Secretary of the Interior to the Secretary of Energy for the environmental review and decision-making related to siting electric transmission lines on Federal lands. The transfer of this authority from the land management agencies to the Department of Energy is likely to favor development of environmentally important public lands.

TITLE XIV — MISCELLANEOUS

Section 1401 (Denali Commission-Alaska Energy Projects) obligates the Federal government to provide the Denali Commission with \$50 million annually (\$1 billion over a period of twenty years) to fund energy-related projects . *This provision was not included in either the House or Senate-passed bills.*

Section 1411 (West Delta Royalty Payments) would obligate the Federal government to pay the State of Louisiana and several holders of State oil and gas leases---Cashco, Pelto and Seneca Resources--- nearly \$40 million. However, under Section 8(g) of the OCS Lands Act, Louisiana has already received approximately \$1 billion as compensation. Under this provision, the State will receive \$16.8 million and the lessees will receive 21.4 million(based on a 44/56 split).

Section 1412 (OCS Revenue Sharing with Oil Producing States) Coastal oil producing states, primarily Louisiana, would receive Federal revenues derived from OCS oil and gas leasing of \$100 million annually (\$1 billion over ten years). Although the revenue sharing is purportedly to mitigate the adverse impacts on states from coastal oil and gas development, there are few restrictions on using the funds. *This new provision was not included in either the House or Senate-passed bills.*